IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Lala @ Ashok Vs. State of Rajasthan
(D.B. Criminal Appeal No.1184/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 26-7-2003 in Sessions Case No.50/2002 passed by Shri Dharam Chand Jain, RHJS, Additional Sessions Judge (Fast Track) Sikar.

Date of Judgment: September 14, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Ashwin Garg, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Manish Sharma for Mr. Anoop Dhand for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated July 26, 2003 of the learned Additional Sessions Judge (Fast Track) Sikar whereby appellant was convicted and sentenced as under:-

U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

U/s.452 IPC:
To suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer imprisonment for one month.

U/s.324 IPC:
To suffer rigorous imprisonment for two years and fine of

Rs.500/-, in default to further suffer imprisonment for one month.

Substantive sentences were ordered to run concurrently.

2. As per the prosecution case on October 31, 1997 around 1.30 PM while Babu Lal (Pw.1) was sitting at tea-shop, Lala @ Ashok (appellant) came to him and asked him to consume liquor, when Babu Lal did not agree, Lala hurled abuses and went to his house. After about 45 minutes Lala, Pushkar, Veera, Natthu and Mahendra entered the house of Babu Lal. Lala gave blow on the head of Babu Lal with sharp edged weapon, Mahendra, Veera and Natthu inflicted blows with lathis, Lala gave blow with knife on the person of Shiv Bhagwan and Pushkar caused injury with Barchhi. Injured Babu Lal and Shiv Bhagwan were removed to hospital where Shiv Bhagwan succumbed to his injuries. Police recorded Parcha Bayan of Babu Lal. On the parcha bayan a case under sections 147, 148, 149, 452, 323 and 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Sikar. Charges under sections 148, 452, 302/149, 323/149 and 324/149 IPC were framed, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 6 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Death of Shiv Bhagwan was undeniably homicidal in nature. As

per post mortem report (Ex.P-2A) following ante mortem injuries were found on the dead body:-

1. Incised penetrating wound oblique 2cm x 1cm x deep in thoracic cavity at left thigh at left 6th inter costal space at mid clavicle region below nipple
2. Incised wound 3cm x 1cm x ½ at base of index finger left hand
3. Abrasion 2cm x 2cm dorsum & left hand
4. Abrasion 3cm x 2cm x at right knee

In the opinion of Dr. G.R. Tanwar (Pw.4) who conducted autopsy the cause of death was excessive hemorrhage due to heart injury. Babu Lal (Pw.1) vide injury report (Ex.P-3A) received following injuries:-

1. Incised wound with clotted blood 1½ x ½ x ½ at scalp left parietal region.
2. Abrasion 1cm x 1cm at forehead region.

4. On analysing the material on record we notice that as many as five assailants were named in the FIR and injuries on the person of deceased were attributed to appellant Lala and one Pushkar who is not before us. In the Parcha Bayan it was however not stated that as to on which part of the body of deceased appellant did inflict the injury. The prosecution has failed to prove that the appellant had enmity with the deceased prior to the incident. Having considered the testimony of Babu Lal (Pw.1), Smt.Jyana (Pw.2) and Smt.Pana (Pw.3) by the yardstick of probabilities, its intrinsic worth and animus of witnesses we find that origin and genesis of incident has been withheld. It appears that after having been acquainted with the injuries in the post mortem report of the deceased, the improvements were made in the evidence adduced at the trial. Since injury on the chest of the

deceased was not attributed to appellant in the Parcha Bayan (Ex.P-1) we are of the view that the prosecution is only able to establish that appellant Lala and other co-accused Pushkar inflicted injuries to the deceased with sharp edged weapons.

5. It is well settled that for an offence to fall under the category of murder (i) there must be bodily injury (ii) the accused must have intended that particular injury and (iii) that bodily injury must be sufficient in the ordinary course of nature for cause death. Where a case falls under either of the following classes, it is within the ambit of Section 304 Part I IPC:

(1) When the case falls under one of the other clause of Section 300 IPC but is covered by the exceptions to that section.

(2) Where the injury caused is not the higher degree of likelihood which is covered by the expression "sufficient in the ordinary course of nature to cause death" but it is of a lower degree of likelihood generally spoken of as an injury "likely to cause death" and the case also does not fall under cl.(2) of Section 300.

6. Clause secondly appended to Section 300 IPC deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be likely consequence of the intended injury.

7. In the facts and circumstances of the case we can impute the

intention to appellant that injury inflicted by him on the vital part of the body of the deceased was likely to cause death and this act of appellant comes within the mischief of Section 304 Par I of the Indian Penal Code.

8. For these reasons, we partly allow the appeal of appellant and instead of section 302 we convict the appellant under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/- in default to further suffer one month simple imprisonment. His conviction and sentence under sections 324 and 452 IPC are maintained. The sentences shall run concurrently. The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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